

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Kastner	Team: Team # 2	CCRB Case #: 201308405	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/03/2013 9:24 PM	Location of Incident: § 87(2)(b)	Precinct: 41	18 Mo. SOL 3/3/2015	EO SOL 3/3/2015	
Date/Time CV Reported Tue, 09/03/2013 10:52 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 09/10/2013 2:41 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Erick Clarck	13492	952593	PBBX
2. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Christian Hernandez	04137	928473	PBBX
2. POM Jose Almonte	04137	952401	PBBX
3. POM Robert Gould	12374	952805	PBBX
4. POM Robert Uhl	31803	953507	PBBX
5. POM Rafael Aquino	28432	952417	PBBX

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Discourtesy: Officers spoke discourteously to individuals.	
B. POM Erick Clarck	Abuse: PO Erick Clarck threatened § 87(2)(b) with the use of force.	

Case Summary

On September 3, 2013, § 87(2)(b) called the IAB command center to file a complaint on behalf of her 14 year old son, § 87(2)(b) (log # 13-38194) (encl. E1-E2), which was received at the CCRB on September 10, 2013 (encl. E3-E4). § 87(2)(b) was not present during the pertinent aspects of the incident. At approximately 9:30 p.m. on September 3, 2013, § 87(2)(b) was among a large group of individuals situated outside of § 87(2)(b) in the Bronx. Several officers, including PO Erick Clarck and PO Jose Almonte, soon arrived to the scene. The following allegations resulted.

Allegation A – Discourtesy: Officers spoke discourteously to individuals.

Allegation B – Abuse of Authority: PO Erick Clarck threatened § 87(2)(b) with the use of force.

§ 87(2)(g)

Although initially mediation eligible, this case was deemed ineligible for mediation due to the large number of individuals involved in this incident.

Results of Investigation

Video Footage

- § 87(2)(b) provided two cell phone videos, which he recorded during the incident, to the CCRB. They are summarized below.

Video 1, five minutes and 58 seconds

§ 87(2)(b) who is not visible, is standing on the sidewalk facing the camera toward the entrance of § 87(2)(b). There is a short staircase that leads from the sidewalk onto a narrow raised platform. At the end of that platform is the front door to the building. It is dark and the only visible form of lighting are two lights positioned on the walls located on either side of the platform. Throughout the video, male officers dressed in blue uniforms are visible. Due to the lighting, their skin complexions are unclear. No female officers or male officers dressed in white shirts are visible.

PO Rafael Aquino, identified via investigation, is speaking with someone not visible and over the radio. Unidentified voices say, "That's § 87(2)(b) book bag," "He's got to go to school tomorrow," and "That's so disrespectful." A group of women are standing on the platform. PO1 is standing against a wall in front of the building and PO2 is standing on the sidewalk. An unidentified male voice says someone has to start recording this. A black woman in a white shirt picks a knapsack, a jacket and a pizza box up off the ground near a wall of the building and walks off camera. Radio noises are heard. PO2 radios for the operator to repeat a message and the operator mentions something about § 87(2)(b) and says nothing further.

The camera pans toward the platform. § 87(2)(b) identified via arrest photo, is standing at the top of the staircase. In the background, § 87(2)(b) identified via arrest photo, is speaking near the officers, but it is unclear what he is saying. PO2 walks upstairs toward the entrance of the building and § 87(2)(b) comes downstairs. One of the officers looks at something with a flashlight and turns the light off. PO Erick Clarck, identified via investigation, walks downstairs with a lit up cell phone in his hand and turns his back to the camera. § 87(2)(b) says,

"What the hell can they hide up there?" A large white male officer comes downstairs with either a flashlight or a lit up cell phone in his hand. The officer with the flashlight turns it back on and points it toward the wall that PO Clarck is facing. One of the officers says something about not taking pictures of them and § 87(2)(b) responds, "No, but we can record it." One of the officers talks into his radio. An unidentified man says something about dismissing "that shit" out of court.

§ 87(2)(b) is standing in front of the stairs leading up to the platform looking at something in his hands. A heavy set white male officer dressed in a blue uniform looks toward the direction that § 87(2)(b) and § 87(2)(b) are standing and says, "Guys, you gotta go. We're being nice, but now..." The rest of his sentence cannot be heard. Multiple people ask why they have to go. § 87(2)(b) who is standing on the platform and pointing his finger at the officers on the sidewalk yells, "First and foremost, let's get one thing straight and no disrespect. Y'all are here to uphold the law, right? Y'all don't make your own law." He says something about there being no cursing. The crowd begins shouting that everyone lives there. § 87(2)(b) shouts that everyone has identification. The officers walk upstairs and approach § 87(2)(b) as the shouting continues.

The camera pans to the left. PO Aquino is talking on a cell phone. He says something about sending people to the location just in case. Someone yells, "Why do you think when y'all rolled up, nobody started walking away? Everybody's from here." PO Aquino hangs up the phone. The crowd continues shouting incoherently. The camera then faces the four officers, including PO Clarck, standing on the platform, where the crowd of women had been earlier. An unidentified male voice says something about being there for their entire lives. § 87(2)(b) says, "I thought it said 'Clean Halls,' not clean outside." PO Aquino tells the crowd, "We're asking you guys to disperse. If you fail to disperse..." The rest of his sentence cannot be heard. PO Aquino speaks to § 87(2)(b) who is standing to his side, but PO Aquino's voice cannot be heard over the crowd. § 87(2)(b) says they are supposed to be there at least three times. Someone tells the officer to get out of there. Another person says something about calling IAB on the officers' "asses."

The camera points back to the platform and § 87(2)(b) is being rear handcuffed near four officers. He has something in his hand and says something about identification. § 87(2)(b) is walked downstairs and onto the sidewalk. The camera is positioned so close to one of the officers' backs that part of his back encompasses the entire screen. § 87(2)(b) raises the camera to see over the officer. He then follows behind them and § 87(2)(b). The crowd is screaming. One unidentified person asks what § 87(2)(b) is being locked up for.

§ 87(2)(b) is stood with his back against a wall. He repeatedly tells two of the officers, one being PO Almonte to do their jobs. The other officer searches § 87(2)(b)'s pockets as the camera is again positioned so close to the officers' back that it encompasses the entire screen. Someone says, "He's a liar. He's a fucking liar." § 87(2)(b) says he told the officer he was giving him his identification. The officer says he was not going to stand around and ask. § 87(2)(b) says, "It's cool. Do what you do. It's no problem. I'm not worried about it." The officer removes a large object and money from § 87(2)(b)'s rear pants pockets. § 87(2)(b) has repositioned himself so he is standing to the left of § 87(2)(b) and the officer, with the camera still pointed very close to those individuals. The crowd begins shouting about badge numbers. Someone yells, "All your badge numbers. Every last one of them. Get all their badge numbers."

The officer walks toward the wall and holds § 87(2)(b)'s arm. § 87(2)(b) pans the camera and two male officers are seen nearby. One of those officers places both palms in front of him and motions with his hands for people to move back. He says something about everyone moving

back, but it is unclear because the crowd is yelling over him. § 87(2)(b) responds, "I don't want to." § 87(2)(b) yells something at that officer as § 87(2)(b) walks closer. The officer says, "Stop. Please don't get that close to me" and places his palm out in front of him. § 87(2)(b) tells the officer not to get so close to § 87(2)(b). An officer walks by, very close to the camera, and says something to § 87(2)(b) who responds, "You came to me" twice. That officer talks into his radio. An officer whose face is not visible, but who is holding a cell phone toward § 87(2)(b) says, "Get yourself over there behind the [unclear] or I'm gonna lock you up." The camera moves downward, catching a glimpse of a large crowd standing in the street. The crowd was behind the camera until this point.

Video 2, 51 seconds

Numerous yelling civilians line the sidewalk as officers are dispersed among them giving orders that are unable to be heard over the noise. A blue uniformed female officer is present. Civilians rush toward the street and an unidentified female yells, "Stay back!" § 87(2)(b) walks into the street and points the camera across the street toward a marked van. § 87(2)(b) is rear handcuffed and is being escorted toward the van by two male officers as three male officers and § 87(2)(b) who is also rear handcuffed, stand nearby. § 87(2)(b) appears to resist the officers by first trying to walk in the opposite direction, and then by stiffening his body. The officers appear to have difficulty placing him inside the van and possibly pull him toward it.

Civilian Statements

Victim: § 87(2)(b)

- § 87(2)(b) *a black man who is 5'8" tall, with black hair and brown eyes, was § 87(2)(b) old at the time of the incident.*

CCRB Statement

§ 87(2)(b) was interviewed at the CCRB on October 17, 2013 (encl. E6-E15). § 87(2)(g)

At approximately 9:30 p.m. on September 3, 2013, approximately 10 to 15 people from § 87(2)(b) in the Bronx, § 87(2)(b)'s grandmother, § 87(2)(b) apartment building, were outside talking. No one was fighting or drinking. Adults, teenagers and younger children were spread across both sides of the sidewalk. § 87(2)(b) was across the street talking with a friend. PO1 and PO2 arrived on foot to § 87(2)(b) building's side of the street, where nine or 10 individuals were congregating. PO1 and PO2 were both somewhere between light-skinned and dark-skinned men. PO1 wore a white shirt, had glasses, and was possibly bald. PO2 wore a blue uniform.

PO1 and PO2 shouted that everyone had to leave. Everyone asked why, but the officers would not say. § 87(2)(b) crossed the street to speak with his aunt, § 87(2)(b) and ask the officers why they had to leave, but throughout the incident, PO1 and PO2 never spoke to him. PO2 called for backup on his cell phone and approximately two minutes later, three patrol cars with an unknown number of uniformed officers arrived, including PO Clarck, a white man, 30 to 35 years old, 5'8" to 5'9" tall, at least 200 pounds, with dark hair; PO3, a Hispanic man with caramel colored skin, 33 to 36 years old, 5'6" to 5'7" tall, 180 to 200 pounds, black hair and dressed in a uniform with a white shirt; PO4, PO5, and PO6, short Hispanic females; and PO7, a man. Aside from PO1 and PO3, all of the officers wore blue uniforms. § 87(2)(b) could not describe them further.

Four or five officers from different directions began screaming and cursing, saying, “Get the fuck away from in front of the building.” § 87(2)(b) could not recall whether additional profanity was used and could not attribute this statement to specific officers. § 87(2)(b)'s uncle, § 87(2)(b) said someone should record what was going on, so § 87(2)(b) took out his cell phone a few minutes after backup had arrived. § 87(2)(b)'s friend, § 87(2)(b) who was one of the individuals who asked why they had to leave, was standing on the steps of the building. § 87(2)(b) did not see what happened immediately prior to an unidentified officer asking for § 87(2)(b)'s identification, but saw him comply. That officer walked § 87(2)(b) down the stairs to PO Clarck. § 87(2)(b) was handcuffed. While § 87(2)(b) said that PO Clarck placed § 87(2)(b) against the building's wall and searched him, the investigation determined that a different unidentified officer did so while PO Almonte stood nearby and PO Clarck stood a few feet away with his back to them.

At the same time, approximately three to five officers searched through a pile of six or seven black plastic bags located against a corner of the building, which contained snacks, including soda, juice, chips, candy, and at least one contained alcohol. The officers removed the contents and threw out the snacks and the bags. There was a knapsack on the floor as well, which belonged to § 87(2)(b) godson, § 87(2)(b) last name unknown, a five or six year old. § 87(2)(b) looked away and when he looked back, alcohol had been poured over it. § 87(2)(b) assumed officers did this.

As § 87(2)(b) who was alone, recorded PO Clarck's interaction with § 87(2)(b) but did nothing else verbally or physically, PO7 told him to back up once and § 87(2)(b) complied. PO7 walked away. Officers, including PO4, PO5, and PO6 kept telling everyone to leave, but no one wanted to. This was the only role PO4, PO5, and PO6 played in the incident. § 87(2)(b) believed PO Clarck's attention was brought to him because § 87(2)(b) had been standing approximately two feet away and recording PO Clarck. § 87(2)(b) was handcuffed against a wall, PO Clarck was behind him, and § 87(2)(b) was to the left of them near the wall. PO Clarck ordered § 87(2)(b) to move back and § 87(2)(b) took two or three steps back toward the street while placing his hands in the air and to his sides. PO Clarck repeated the order and § 87(2)(b) moved back another two or three steps. § 87(2)(b) first said PO Clarck began grabbing, pushing and pulling him, but later said PO Clarck never made contact with him.

PO Clarck turned around, removed an asp, described as a black stick, from his utility belt, expanded it, raised his arm above his head with his elbow bent, and was about to strike § 87(2)(b) with it when § 87(2)(b) friend's son, § 87(2)(b) last name unknown, who is in his 30s, stepped in between § 87(2)(b) and PO Clarck. § 87(2)(b) yelled for PO Clarck not to hit § 87(2)(b) because he is a child. PO Clarck stopped. The asp never made contact with § 87(2)(b). As § 87(2)(b) pulled § 87(2)(b) away by his arm, § 87(2)(b) stopped recording. She sent § 87(2)(b) to § 87(2)(b) apartment, where he told his mother, § 87(2)(b) what had happened. § 87(2)(b) and § 87(2)(b) went downstairs, § 87(2)(b) pointed out PO Clarck, and § 87(2)(b) obtained his last name and shield number. Mike, § 87(2)(b) and PO3 witnessed the interaction between § 87(2)(b) and PO Clarck. The other officers were scattered around elsewhere and did not witness the interaction, including PO7. § 87(2)(b) was not paying attention to where his phone was pointed when he interacted with PO Clarck, which is why the video did not capture their interaction.

A marked van arrived. § 87(2)(b) and another man, known to § 87(2)(b) only as another friend of § 87(2)(b) but identified via investigation as § 87(2)(b) were handcuffed and placed in the van. § 87(2)(b) did not know why they were arrested. During the incident, which lasted at least 15 minutes, no one tried to interfere with the arrests. At the conclusion, the officers and civilians left the area.

Witness: § 87(2)(b)

- § 87(2)(b) an § 87(2)(b) old woman, is § 87(2)(b)'s aunt.

Phone Statement

On November 1, 2013, § 87(2)(b) provided a brief phone statement (encl. J6).

On September 3, 2013, officers arrived and asked one man for his identification, the man said he did not have it, and he was subsequently arrested. § 87(2)(b) was recording an officer when that officer turned around, "bumped" § 87(2)(b) pulled a stick out and raised it while telling § 87(2)(b) to "Get the fuck back!"

Between October 28, 2013 and November 15, 2013, § 87(2)(b) was called five times and two voicemail messages were left for her. On November 1, 2013, § 87(2)(b) confirmed her contact information, provided the above phone statement, and said she was unsure whether she wishes to participate in the investigation, but agreed to contact the CCRB in one week with her decision. However, § 87(2)(b) failed to do so. Two unreturned letters were sent on October 28, 2013 and November 13, 2013. As of the date of this report, § 87(2)(b) has failed to contact the CCRB to schedule an in-person statement. A search of the NYC Department of Correction Inmate Tracking System revealed that § 87(2)(b) is not currently incarcerated.

Attempts to Contact Civilians

- Aside from § 87(2)(b) the man identified by § 87(2)(b) during his CCRB interview as § 87(2)(b) last name unknown, was the only other civilian to witness the alleged threat of force. At the time of § 87(2)(b)'s CCRB interview, § 87(2)(b) who was not present until the conclusion of the incident, agreed to contact the CCRB with a last name and contact information for § 87(2)(b) but failed to do so. On October 28, 2013 and November 13, 2013, § 87(2)(b) was called and two voicemail messages were left. An unreturned letter was sent on November 15, 2013. As of the date of this closing report, § 87(2)(b) has failed to contact the CCRB in regard.

§ 87(2)(g)

NYPD Statement:

Subject Officer: PO ERICK CLARCK

- *PO Clarck, a Hispanic man who is 6'0" tall, weighs 248 pounds, with black hair and brown eyes, was § 87(2)(b) old at the time of the incident.*
- *PO Clarck worked from 7:30 p.m. on September 3, 2013 to 5:15 a.m. on September 4, 2013, assigned to Foot Post 23, located on Rogers Street from East 163rd Street to Dawson Street. He was dressed in uniform and working with PO Jose Almonte.*

Memo Book

9:14 p.m., Radio run for disorderly group on front of § 87(2)(b) 9:16 p.m., Arrive at § 87(2)(b) § 87(2)(b) Upon arrival, we observed a large group of individuals with loud music and open alcohol containers sitting and standing in the lobby and terrace of the main entrance of § 87(2)(b) § 87(2)(b) Multiple individuals refused to disperse and comply with lawful orders. Defendant § 87(2)(b) refused to provide identification to requesting officer making [illegible] to arresting officer. [Illegible.] Defendant resisted arrest by flailing his arms and striking up. Defendant started yelling obscenities and making threats which caused the large group to react in a threatening way. Defendant started yelling to the crowd, "Fuck the police. You mother fucker

should be my shooting targets.” As we started moving the crowd, I was forced to deploy my expandable baton in fear of my safety and other police officer [At this point, PO Clarck read into the record that he did not strike anyone, although this was not mentioned in his memo book]. PO Robert Uhl requested an additional unit due to the fact that we were surrounded by more than 25 individuals. As back up arrived, the other defendant, § 87(2)(b) refused lawful order to disperse. Defendant responded, “Fuck you.” I proceeded to place this individual under arrest, which he resisted by pushing arresting officer, flailing his arms and stiffening up, cursing obscenities, and making threats, igniting the crowd. 9:24 p.m., Under time. 9:30 p.m., Arrive at 41st Precinct. 12:20 a.m., Online arrest completed. § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) 12:31 a.m., Online complaint report done. 1:40 a.m., Fingerprints. 2:20 a.m., Paperwork sent to [illegible]. 2:45 a.m., Called [illegible] to verify fax. 4:20 a.m., Six vouchers. 4:59 a.m., Sgt. signed vouchers. 5:15 a.m., End of tour (encl. F1-F5).

CCRB Statement

PO Erick Clarck was interviewed at the CCRB on December 19, 2013 (encl. F6-F9).

PO Clarck and PO Jose Almonte picked up a radio run for a large crowd outside of § 87(2)(b) § 87(2)(b). The job resulted from a call made by a resident, who complained that individuals were blocking the entrance to the building with shopping bags. Upon arrival, the officers observed a group of approximately 20 to 25 people. Some individuals were standing around the stairs and the steps that lead to an open terrace, which subsequently leads to the entrance to the building. Others were on the sidewalk. The location was well lit via street lights and lamps that hung near the entrance to the building. There were chairs set up near the steps. The crowd was blocking the entrance to the building. Loud music was playing from a radio located on the ground. Also on the ground were an unknown number of 24-ounce open cans of “Budweiser-ritas” and white plastic cups.

While at the scene, PO Clarck did not observe any individuals actually consume alcohol and no one held anything in their hands. Since the officers did not know who the cans belonged too, they could not issue summonses for open containers. Instead, they ordered the group to disperse approximately four times and to turn down the music, but they refused to comply, claiming they all lived there. PO Clarck ordered § 87(2)(b) to move three times, but he refused. PO Clarck then ordered § 87(2)(b) to produce his identification three times so he could issue a summons, but § 87(2)(b) refused to comply and said, “No, you give me your ID.” § 87(2)(b) began cursing and making the threats noted in PO Clarck’s memo book. PO Clarck and PO Almonte attempted to place § 87(2)(b) under arrest. As they handcuffed him, § 87(2)(b) resisted by moving his body, flailing his arms and yelling, “Fuck the police!” more than once. This caused the crowd to ignite and respond in a threatening way. They yelled things to the effect of, “Fuck you,” “Fuck the police,” and “We all live here.”

Fearing the possibility of airmail, described as objects ranging from tin cans to even a sink being thrown from the roof of the building, the officers escorted § 87(2)(b) to the side away from the crowd. However, the crowd followed. PO Almonte held § 87(2)(b) in custody while PO Clarck had his back to PO Almonte in order to keep his eye on the crowd. Around this time, PO Robert Gould and PO Robert Uhl, who were assigned to a nearby foot post and had observed the scene from their location, arrived. PO Clarck then saw a piece of unidentified airmail hit the ground. Fearing for their safety, PO Uhl requested an additional unit to respond to the location via radio.

PO Clarck ordered the crowd to step back, but he did not say anything to the effect of “Step the fuck back” or “Back the fuck up.” He used no profanity at the scene and heard no officer do so. The crowd refused to comply, so PO Clarck deployed his asp for presence, described as removing it from his utility belt, pointing it toward the ground, and expanding it while again ordering everyone to step back. PO Clarck did not raise his asp further than his waistband, did not hold it up in front of any civilian, did not take steps forward or make any other movements while it was expanded, and did nothing else with it. In response, the crowd stepped back about two steps. No other officer removed their asp or baton at the scene.

The additional unit, which consisted of Sgt. Christian Hernandez and his unknown operator, arrived in a marked van and the officers continued attempting to disperse the crowd as well as bring § 87(2)(b) toward the van. At this point, § 87(2)(b) who had been one of the individuals yelling, “Fuck the police” and a large unidentified man, tried to interfere in § 87(2)(b) arrest. They told the officers to let § 87(2)(b) go because he had done nothing and stepped further toward them than the rest of the crowd. While the crowd was only getting too close to the officers, standing a foot or two away, when PO Clarck ordered § 87(2)(b) to move back, § 87(2)(b) refused and pushed PO Clarck. PO Clarck then decided that § 87(2)(b) would be arrested and placed him in handcuffs. § 87(2)(b) resisted by moving his body, flailing his arms, and yelling obscenities. PO Clarck was able to handcuff § 87(2)(b) by pulling his hands behind his back. The officers then continued attempting to disperse the crowd.

Individuals continued yelling, “Fuck the police!” and saying they had a right to be there. The officers explained the nature of the call they had received that brought them to the location and said § 87(2)(b) was one of the individuals who had been blocking the entrance with the bags. § 87(2)(b) and § 87(2)(b) who were both aggressive and both had a strong smell of alcohol emanating from them, were escorted toward the van transported to the 41st Precinct stationhouse. Prior to transport, they were searched and § 87(2)(b) was found to be in possession of a crack pipe. PO Clarck was on the scene for approximately eight or nine minutes. As he left with the perpetrators and the unidentified operator of the van, the crowd was still yelling and the open alcohol containers were still on the ground. Sgt. Hernandez was the only supervisor present who PO Clarck recalled. Only officers from PO Clarck’s command were present.

PO Clarck did not recognize § 87(2)(b) upon reviewing his CCRB photo and was unaware of anyone recording the incident. Aside from pulling the arms of § 87(2)(b) and § 87(2)(b) behind their backs, he used no additional force against them or any other civilian at the scene. PO Clarck pushed no civilian and threatened none with the use of force. At some point, a woman, identified via investigation as § 87(2)(b) asked for PO Clarck’s name and shield number. PO Clarck held up his visible shield and nameplate and said, “This is my name and shield number.” § 87(2)(b) then stepped to the side. She played no additional part in this incident.

NYPD Document

911 Call

- An unidentified woman called 911 to report that the police needed to come to § 87(2)(b) to get a group of “boys” making a lot of noise out of the vestibule area.

Summons/Arrest for Incident and Disposition

- None of the civilians who participated in this complaint were arrested or summonsed as a result of this incident.

Status of Civil Proceedings

- As of the date of this closing report, a request to determine whether § 87(2)(b) and § 87(2)(b) have filed a Notice of Claim with the City of New York with regard to the incident is still pending.

Civilians' Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilian(s) CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) and the first CCRB complaint in which § 87(2)(b) is a participant (encl. C1-C2).

Subject Officer(s) CCRB History

- PO Erick Clarck has been a member of the service for one year and there are no substantiated CCRB allegations against him (encl. B1).

Conclusion

Identification of Subject Officer

- PO Clarck acknowledged interacting with § 87(2)(b) alleged that four or five officers used profanity at the scene, but could not attribute the discourteous statement to specific officers. § 87(2)(g)

Allegations Not Pled

- Although an aspect of § 87(2)(b)'s complaint was that officers searched through shopping bags and spilled alcohol over a knapsack, given that the shopping bags and the knapsack were on the floor and not in anyone's possession, and that he saw no officer actually pour the alcohol onto the knapsack, these allegations have not been pled.
- § 87(2)(b) initially said PO Clarck began grabbing, pushing and pulling him, but then said PO Clarck made no physical contact with him throughout the incident. § 87(2)(g)
- § 87(2)(b) alleged that PO Clarck spoke discourteously toward § 87(2)(b) but given that she did not provide a verified statement and § 87(2)(b) did not allege this himself, it has not been pled.
- In the video of this incident, an unidentified officer is heard saying, "Get yourself over there behind the [unclear] or I'm gonna lock you up." Given that this statement was lawful and that the threat of arrest has not been alleged by any civilian, it has not been pled.

Investigative Findings and Recommendations

Allegation A – Discourtesy: Officers spoke discourteously to individuals.

§ 87(2)(b) said that upon officers ordering the crowd to disperse, individuals asked why they had to do so instead of complying. § 87(2)(b) himself, instead of complying, crossed the street to ask the officers why they had to leave. At that point, four of five unidentified officers from different directions yelled, "Get the fuck away from in front of the building."

In PD v. Court (DCT no. 79627/04) (encl. A1-A10), it was determined that the use of profanity by officers toward unruly civilians during a stressful street encounter in order to gain compliance does not rise to the level of misconduct. § 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority: PO Erick Clarck threatened § 87(2)(b) with the use of force.

It is undisputed that in response to § 87(2)(b) standing within two feet of PO Clarck and an individual in custody, PO Clarck removed his asp from his utility belt. While § 87(2)(b) alleged that PO Clarck then raised the asp above his head with the intention of striking § 87(2)(b) PO Clarck denied raising it higher than his waistband. In either case, the undisputed aspect of this action alone is an implied threat of force.

PD v. Briscoe (OATH no. 1328/00) (encl. A11-A37) determined that an implied threat of force that serves no purpose other than to intimidate an individual, is an abuse of an officer's authority.

§ 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date